IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14033 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAYURBHAI @ CHINTU HASMUKHBHAIJAYSWAL - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,

RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 13/09/2005

ORAL JUDGMENT

1. The order of detention dated 25th June, 2005 is challenged in this petition by the pettioner detenue under Article 227 of the Constitution of India passed by the District Magistrate, Baroda in exercise of powers conferred under Sub-section 2 of Section 3 of the Gujarat Prevention of Antisocial Activities Act (for short, the 'PASA Act'), 1985 detainig the detenue as “Bootlegger”.

Alongwith the said order of detention as per requirement of Sub-section 1 of Section 9 of the PASA Act, the grounds are also supplied containing the registration of three offences at Bodeli Police Station under various sections of Bombay Prohibition Act, 1951. It also contains statements recorded by a

secrete witnesses. The tenor of the order of detention on the ground contains therein, indicate about antisocial and criminal activities of the detenue disturbing the public order and general public health of the public. The statements of the witnesses suggest that the detenue is in habit of indulging ino violent activities at the public place and detaining authority arrived at the subjective satisfaction that the activities of the detenue are prejudicial to the public order and general health of the public.

2. The learned advocate Mr. H.R.Prajapati for the petitioner has challenged this order mainly on the ground that privilege under Section 9(2) is wrongly claimed by the authority since there is no contemporaneous record. He has further relied on another ground about disturbance of public order by the alleged prejudicial activities of the detenue resulting into the disturbance of the public order or general health of public. He, however, submitted that there is another ground for quashing the order of detention that there is dealy in passing the

order of detention, since last offence was registered on 08.05.2005 and the order of detention is passed on 25th June, 2005. However, he has submitted that any one of the above ground will be sufficient to quash and set aside the order of detention.

In support of his arguments he has relied upon the decision reported in 2000 (1) GLH 320 and 2000 (4) GLR 3236. He has also relied upon the judgment dated 06.09.2005 passed in Special Civil Application No.15774 of 2005. He has also relied upon the judgment of Letters Patent Appeal No.223 of 2000 of this High Court in support of the argument about mere bootlegging activities does not amount disturbing the public order.

3. The learned Assistant Government Pleader Mrs. Hansha B. Punani has submitted that statement of two witnesses and registration of crimes against the detenue are sufficient enough for detainig authority to arrive at a conclusion about the prejudicial activities of the detenue disturbing

the public order and general health of the public and she has also opposed the release of the detenue.

4. I have considered rival submissions and on perusal of the record I am inclined to accept all the grounds urged by the learned advocate for the petitioner to quash and set aside the order. It is true that no contemporaneous record is available for the detaining authority for claiming privilege under Section 9(2) of the PASA Act. Not only that, but, non-supply of the names and addresses of the witnesses, in a given case may affect the right of the detenue to make effective representation. It is also required to be noted that proposal prepared by the Sponsoring Authority requires to be verified b the detaining authority on the basis of relevant materials and this process of approval cannot be a mechanical one and the detaining authority has to apply mind independently. The subjective satisfaction of the detaining authority must be on each statement and qua the identity of each informant about specific information for arriving

at a conclusion that the activities of the detenue is prejudicial to the public order or general health of the public.

In the above propostions of law, in the present case it cannot be said that there was contemporaneous records or materials before the detaining authority to exercise power under Subsection 2 of Section 3 of PASA Act and which has deprived the right of the detenue to make effective representation which is also violative of provisions of Article 22 (5) of the Constitution of India.

Besides there is no ample material to suggest about the disturbance of the public order or general health of the public by the prejudicial activities of the petitioner as stated in the grounds of detention qua the registration of crime under Bombay Prohibition Act, 1951. This is also a ground on which the order of detention can be quashed and even delay in passing the order of detention is not reasonably explained and justified.

Collectively on all the above grounds, the order of detention dated 25th June, 2005, passed by the District Magistrate, Baroda, is quashed and set aside and the detenue Mayurbhai @ Chintu Hasmukhbhai Jayswal is ordered to be set at liberty forthwith, if he is not required in any other offence by any other authority. Rule is made absolute with no order as to costs. Direct service is permitted.

(ANANT S. DAVE, J.)

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